

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

P.B. A MINOR CHILD BY AND THROUGH Case No.
HIS PARENTS
T.B. AND L.B.
PLAINTIFFS,
vs.
THORP SCHOOL DISTRICT
DEFENDANT

COMPLAINT FOR DECLARATORY
RELIEF, DAMAGES, ATTORNEY'S FEES,
AND COSTS

I. INTRODUCTION

1. P.B. is a student with a disability who attended the Thorp School District as a kindergarten student in the fall of 2018. The Parents did not believe he was receiving an appropriate evaluation or an appropriate education in the Thorp School District and they believed the Student's teacher was physically abusing him. After multiple attempts to resolve the problems, the Parents removed the Student from school and subsequently filed for a due process hearing.

- 1 2. Parents of a student with a disability have a right under the IDEA and Washington state law
2 to request an impartial hearing to resolve disputes about any matter related to the
3 identification, evaluation, educational placement, or the provision of a free appropriate public
4 education to the student. 20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.507(a), and WAC 392-
5 172A-05080. In Washington, IDEA hearings are conducted by the Office of Administrative
6 Hearings on behalf of the Office of the Superintendent of Public Instruction (OSPI), or the
7 State Education Agency.
- 8 3. The Parents filed for a due process hearing on May 30, 2019, as per the above state and
9 federal laws and regulations, in order to show that the evaluation, the program, and the
10 environment the District had offered was not appropriate and denied the Student a free,
11 appropriate, public education (“FAPE”).
- 12 4. A due process hearing was held before an administrative law judge in September of 2019.
13 The administrative law judge ruled partially for the Parents and partially for the school
14 district in a decision dated December 21, 2019.
- 15 5. For the parts of the decision the administrative law judge ruled for the District, including how
16 she determined the remedies for the Parents, the Parents believe those rulings contain
17 substantial errors of law and fact. The legal errors are fundamental and include both the
18 failure to apply and/or the misapplication of central requirements of the IDEA.
- 19 6. Parents are appealing parts of the decision of the administrative law judge, as detailed infra.
20 Under the IDEA, a complaint may be brought in a district court of the United States without
21 regard to the amount in controversy. 20 U.S.C. § 1415(i)(2)(A), 34 C.F.R. § 300.516, and
22 WAC 392-172A-05115. OSPI provides the court with the records of the administrative
23 proceedings and the court hears additional evidence at the request of a party. 20 U.S.C. §
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1 1415(i)(2)(C)(i) & (ii), 34 C.F.R. § 300.516(c)(1) & (2), and WAC 392-172A-05115(3)(a) &
2 (b).

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5 **II. JURISDICTION**

- 6 7. This action arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 *et*
7 *seq* (IDEA) and the regulations adopted there under.
- 8 8. The Plaintiffs are appealing from a final order from an administrative law judge dated
9 December 21, 2019 and as such have exhausted all administrative remedies and may appeal
10 to this Court pursuant to 20 U.S.C. §1415(i)(2) and W.A.C. 392-172A-05115.

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13 **III. VENUE**

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- 15 9. All acts and omissions at issue occurred or failed to occur in the Eastern District of
16 Washington in Kittitas County. As such venue is proper for this Court.

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18 **IV. PARTIES**

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- 20 10. P.B. (hereafter “Student”) is a seven year old student who resides with his parents in the
21 geographical boundaries of the Thorp School District in Kittitas County.
- 22 11. T.B. (hereafter “Father” or “Parent” or collectively with Mother as “Parents”) is the
23 Student’s father and he resides in Thorp Washington within the geographic boundaries of the
24 Thorp School District in Kittitas County.

1 12. L.B. (hereafter "Mother" or "Parent" or collectively with Father as "Parents") is the
2 Student's mother and she resides in Thorp Washington within the geographic boundaries of
3 the Thorp School District in Kittitas County.

4 13. Defendant Thorp School District is a school district in the State of Washington, in Kittitas
5 County, and is fully accredited as a provider of educational services and is thereby
6 responsible for providing appropriate services to qualified special education students
7 pursuant to R.C.W. 28A.155.090 and W.A.C. 392-172-030.

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10 **V. FACTUAL ALLEGATIONS**

11 14. Student qualified for special education services under the category of Communication
12 Disorder in the Ellensburg School District when he was in a preschool program in Kittitas
13 County. For the 2016-2017 and the 2017-2018 school years, the Student received speech and
14 language services in his preschool program from a speech and language pathologist from the
15 Ellensburg School District.

16 15. The Student's last IEP was written by the Ellensburg School District in March of 2018 and
17 provided the Student with speech and language services.

18 16. In April of 2018 the Student was diagnosed with Autism Spectrum Disorder by a private
19 provider.

20 17. On June 4, 2018 the Parents met with the Student's preschool teacher and staff along with
21 special education staff from the Ellensburg School District. No one from the Thorp School
22 District attended despite being invited. The purpose of the meeting was to review the
23 Student's program in the preschool program and to discuss the transfer of services of the
24 Student to the Thorp School District as he would be attending there in the fall. At that
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1 meeting it was determined the Student required a Re-Evaluation due to his recent diagnosis
2 of Autism Spectrum Disorder. It was the opinion of the Ellensburg School District that this
3 Re-Evaluation should be done by the Thorp School District as the Student would be
4 attending there starting in September of 2018. This recommendation was given to staff in the
5 Thorp School District.

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7 18. In June of 2018, the Mother met with Thorp School District staff to discuss the Student's
8 transition. The Mother communicated via text messages with the kindergarten teacher in the
9 Thorp School District trying to arrange a meeting with her.

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11 19. The Mother, with the Student, met with the Thorp School District's kindergarten teacher Ms.
12 Green on June 21, 2018 in Ms. Green's classroom. The purpose of the meeting was for the
13 Mother to explain to Ms. Green the Student's diagnosis and his school challenges.

14 20. In June of 2018, the Ellensburg School District transferred the Student's entire file to the
15 Thorp School District.

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17 21. On September 7, 2018 the Mother with the Student and the Student's grandmother met with
18 Ms. Green again. At that meeting the Mother filled out a questionnaire and discussed with
19 Ms. Green the Student's disability, how it impacted him in a school setting, and asked Ms.
20 Green to talk with the preschool teacher about how best to work with the Student.

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22 22. At the September 7, 2018 meeting, a special education staff person for the Thorp School
23 District came into Ms. Green's room during their meeting and handed the Mother paperwork
24 to sign. Before that special education staff person left, they discussed the Student's new
25 diagnosis of autism and the Mother's request for a full evaluation. The form was to give
26 permission for the Thorp School District to evaluate the Student. The form was blank. The
27 Mother asked Ms. Green for help filling it out and Ms. Green told her to just sign it and
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1 District staff would fill it out. The Mother repeated that she wanted a full evaluation for the
2 Student and wanted to know how to put that on the form, but Ms. Green told her to just sign
3 the form, which the Mother did.
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5 23. The Mother asked Ms. Green to contact the Student's preschool teacher to get information on
6 the Student's disabilities and how to best work with him. The Mother offered to give Ms.
7 Green multiple ways to contact the preschool teacher. Ms. Green declined and never
8 communicated with the Student's preschool teacher. No one from the Thorp School District
9 ever spoke to the Student's preschool teacher.

10 24. The next time the Parents saw this form was when it was given to them after a request for all
11 the Student's records as preparation for the due process hearing. That form was for
12 permission to conduct the evaluation of the Student and was now filled out, but only "OT"
13 was checked despite the Parents asking for a full evaluation. That form was placed into
14 evidence and Mel Blair, the Thorp School District's special education director, testified she
15 filled it out herself and back-dated it.
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17 25. The Thorp School District proceeded with only an evaluation in the area of occupational
18 therapy ("OT") and not the full evaluation the Parents requested. The Thorp School District
19 never filled out any of the required IDEA paperwork that should have accompanied this
20 evaluation: no Prior Written Notices and no explanation of what the District proposed to
21 conduct. As no paperwork was filled out, the Parents believed, mistakenly, the District was
22 going to conduct the full evaluation they requested. With receipt of all of the Student's
23 paperwork with the District, it was clear District staff never intended to conduct a full
24 evaluation as requested.
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- 1 26. Starting the week of September 17, 2018, the Mother observed Ms. Green aggressively
2 dragging the Student down the hallway. The Mother observed Ms. Green aggressively
3 dragging, grabbing, and forcing the Student to the ground on three separate occasions. The
4 Student came home with bruises on his body, telling his Mother his teacher “hurted” him and
5 that he was afraid to go back to school. The Mother reported this to school staff who
6 reported it to Andrew Perkins.
- 7 27. Parents called and sent multiple emails to Andrew Perkins, the Thorp School District
8 principal and superintendent explaining what was happening and asking for him to intervene.
9 Mr. Perkins defended Ms. Green, stating she was a “great teacher” and was “fair” to all
10 students. Mr. Perkins told the Parents what they described could not have happened and he
11 told them to resolve their problems with Ms. Green directly.
- 12 28. After the first incident the Mother spoke on the phone with Ms. Green to discuss her
13 treatment of the Student. Ms. Green told the Mother the Student did not have autism, that his
14 behaviors were typical kindergarten misbehavior and he needed to be punished as she saw fit.
- 15 29. After the second incident of aggressive behavior by Ms. Green, the Mother met in person
16 with Ms. Green and a Thorp School District administrator. The Mother tried to explain that
17 the behaviors school staff were seeing were symptoms of his autism spectrum diagnosis. At
18 that meeting Ms. Green repeated her view that the Student did not have autism and needed to
19 be punished for his misbehavior. Ms. Green also stated that the Student was “too smart” and
20 would not qualify for special education services.
- 21 30. As Ms. Green continued her aggressive treatment of the Student, the Mother sent multiple
22 emails and made multiple phone calls trying to get Mr. Perkins to intervene, explaining she
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1 could not resolve things with Ms. Green. The Mother sent multiple proposed dates for a
2 meeting, but no meeting was ever confirmed.

3 31. As the Thorp School District refused to meet with the Parents or resolve their concerns, the
4 Parents removed the Student from school the first week of October 2018.

5 32. With the production of the Student's special education records with the Thorp School
6 District, it was revealed that the Thorp School District did not provide the Student with his
7 IEP speech and language services. During the four weeks the Student attended the Thorp
8 School District he NEVER met with the speech and language pathologist and only met with
9 the speech and language pathologist's assistant once for a fifteen minute "meet and greet".

10 33. No special education services were provided to the Student despite his significant behavior
11 problems in the school setting based in his autism diagnosis. Ms. Green testified the Student
12 ran away from her and had multiple behavior problems daily in her program.

13 34. No accommodations were provided to the Student despite his significant behavior problems
14 in the school setting based in his autism diagnosis.

15 35. The Parents obtained private services for the Student and a private evaluation by a clinical
16 psychologist. The Parents presented evidence in the due process hearing that the Student's
17 problem behaviors were symptomatic of his autism spectrum diagnosis and that Ms. Green's
18 aggressive handling of the Student significantly impacted his autism spectrum disorder and
19 mental health.

20 36. Dr. Steven Tutty, the clinical psychologist who evaluated the Student testified as to why
21 occupational services would be insufficient to provide the Student with an appropriate
22 education. Dr. Tutty explained in testimony the significant special education services the
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1 Student required that included therapeutic services based on the recommendations and
2 testimony of the Student's other private providers.

3 37. At the due process hearing, Andrew Perkins testified he reviewed videos of all the incidents
4 on all the dates the Parents told him Ms. Green had hurt the Student. Mr. Perkins testified he
5 saved one video and had the others erased after he viewed them. When the videos were
6 requested through discovery before the due process hearing, only one video was produced for
7 one date the Parents complained about. The Parents were told that was the only video. With
8 Andrew Perkin's testimony it became clear the other videos existed, but were erased at the
9 direction of Mr. Perkins.

10 38. After the due process hearing, community members heard about the issues raised in the
11 hearing and approached the Parents. Community members told the Parents there had been
12 multiple complaints about Ms. Green being inappropriately aggressive with other students
13 through the years and there were letters in her teacher's file documenting this. The Parents,
14 through counsel, had received Ms. Green's teacher file before the hearing and nothing was in
15 the file they were given. Upon learning this after the due process hearing, the Parents,
16 through counsel, asked again specifically for such letters and one letter was eventually
17 produced, but that was all.

18 39. The administrative law judge, Judge Diederich, ruled for the Parents on some issues and for
19 the District on other issues.

20 40. Judge Diederich ruled the District denied the Student a free, appropriate public education
21 ("FAPE") and deprived him of an educational benefit when it failed to provide to him his IEP
22 services, when it failed to provide to the Parents informed consent for the evaluation it
23 proposed to conduct, and when it failed to provide to the Parents any Prior Written Notice
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1 about the evaluation which thereby failed to allow the Parents meaningful participation in the
2 evaluation

3 41. Judge Diederich did not rule on whether the District denied the Student a FAPE when it
4 failed to provide behavioral services to the Student or any other supports or services, or
5 accommodations, based on his disability. The Parents appeal this ruling.

6 42. Judge Diederich ruled the District did not deny the Student a FAPE when it only conducted
7 an evaluation in the area of occupational therapy instead of the full evaluation the Parents
8 requested. The Parents appeal this ruling.

9 43. Judge Diederich ruled Ms. Green's aggressive behavior did not deny the Student a FAPE.
10 Judge Diederich based this ruling on her finding that "others" who witnessed the incidents
11 did not believe Ms. Green was behaving inappropriately. The Parents appeal this ruling.

12 44. Regarding the Parents' requested remedies, Judge Diederich only granted to the Parents
13 compensatory speech and language services despite concluding there were significant denials
14 of a FAPE to the Student. The Parents are appealing how remedies were determined.

15 45. As the Parents prevailed on a number of significant issues that denied the Student a FAPE
16 and deprived him of an appropriate education, the Parents are requesting their attorney's fees
17 and costs for the due process hearing and for bringing this action to collect those fees. If the
18 Court rules for the Parent, overturning any of the administrative law judge's rulings, then the
19 Parents, as prevailing parties in their appeal to this Court, would be entitled to their fees and
20 costs for this entire action.

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26 VI. CLAIMS FOR RELIEF

27 I. **Denial of Special Education Rights Under Federal and State Law**

- 1 1. The factual allegations set forth in paragraphs 14 through 45 above are hereby alleged and
- 2 incorporated by reference.
- 3 2. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq*, requires that
- 4 school districts provide students with a free, appropriate, public education including special
- 5 education and related services.
- 6 3. Washington state law requires school districts within the state provide to all eligible students
- 7 between the age of three and twenty-one, within their boundaries, a free, appropriate, public
- 8 education. W.A.C. 392-172-030. A school district in the state of Washington has an
- 9 obligation to provide appropriate educational services to meet the needs of a student who has
- 10 a disability separate and apart from its obligation to provide a free appropriate public
- 11 education under federal law. W.A.C. 392-172-020(2).
- 12 4. Thorp School District through its administrators, agents, and employees, violated state and
- 13 federal law by not providing Student with a Free Appropriate Public Education for the 2018-
- 14 2019 school year, as well as the school years through this Court's final decision.
- 15 5. Thorp School District through its administrators, agents, and employees, violated state and
- 16 federal law by not providing Parents their rights to fully participate in their child's education
- 17 and thereby denied the Student a Free Appropriate Public Education for the 2018-2019
- 18 school year, as well as the school years through this Court's final decision.
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24 **VII. Prayer for Relief**

25 **WHEREFORE**, based on the denials and violations enumerated above, the Plaintiffs on behalf
26 of their disabled son seek the following relief:

- 27 1. That the Court take and retain jurisdiction over this matter until all orders are completed.

- 1 2. That the Court declare that the Defendant violated the procedural and substantive provisions
- 2 of the IDEA under state and federal law and failed to provide the Student with a free,
- 3 appropriate, public education (FAPE) for the 2018-2019 school year as well as the school
- 4 years through this Court's final decision.
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- 6 3. That the Court overturn the decision of the administrative law judge when she ruled that the
- 7 District's evaluation for only occupational therapy was appropriate, that the District did
- 8 not deny the Student a FAPE due to their teacher's overly aggressive treatment, and that
- 9 the District did not deny the Student a FAPE when it failed to provide any special
- 10 education services or supports or any accommodations as needed due to the impact of his
- 11 autism diagnosis on his ability to benefit from his education. Further that the Court
- 12 overturn the decision of the administrative law judge denying the Parents their remedies.
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- 14 4. Based on these denials and violations, a finding by the Court that the appropriate program
- 15 for Student for the 2018-2019 school year, and school years moving forward, was a
- 16 placement at Gersh Academy with appropriate services and supports, along with living
- 17 expenses for the Mother and the Student near Gersh Academy.
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- 19 5. Based on these denials and violations, the Court order the Defendant to provide the Student
- 20 speech and language services through a private provider.
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- 22 6. Based on these denials and violations, the Court order the Defendant to conduct an IEP
- 23 meeting within 30 days to include the Parents, teachers and administrators from the Gersh
- 24 Academy, and appropriate District staff as IEP members for the purpose of developing an
- 25 IEP for the Student that places him at Gersh Academy and that includes appropriate living
- 26 expenses for the Parent and the Student.
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7. Based on these denials and violations, the Court determine the Plaintiffs to be prevailing parties to this action and the underlying due process hearing and order reimbursement of all attorney's fees and costs related to pursuing both actions.
 8. Any and all other relief as the Court may deem just and equitable.

Dated this 18th day of March, 2020

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